

DEPARTMENT OF STATE REVENUE
LETTER OF FINDINGS NUMBER: 99-0060
Sales/Use Tax
For the Year 1995

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Sales/Use Tax-Manufacturing Exemptions

Authority: Ind. Code § 6-2.5-5-4; Ind. Code § 6-2.5-5-5.1

Taxpayer protests the Department's assessment of use tax with respect to various items of tangible personal property it claims were used in its manufacturing process.

II. Sales/Use Tax-Statute of Limitations

Authority: Ind. Code § 6-8.1-5-2

Taxpayer protests the Department's assessment with respect to several items that it claims were assessed outside the statute of limitations for such assessments.

III. Tax Administration-Penalty

Authority: Ind. Code § 6-8.1-10-2.1; 45 IAC 15-11-2

Taxpayer protests the imposition of the ten percent (10%) penalty for negligence.

STATEMENT OF FACTS

Taxpayer is a business engaged in the production of batteries. During the year in question, Taxpayer operated two Indiana facilities in controversy. For the year in question, Taxpayer made several purchases that it asserted were used in its battery production. In addition, for several purchases, Taxpayer maintained that the items were assessed outside of the statute of limitations. Taxpayer was assessed use tax and penalty for these purchases, which Taxpayer protested.

I. Sales/Use Tax-Manufacturing Exemptions

DISCUSSION

Taxpayer protested the assessment of a number of items based on their use for the production of other tangible personal property. To qualify for the sales tax exemption for production, the items must be directly used or consumed for the direct production of tangible personal property. Ind. Code § 6-2.5-5-4 and -5.1. Here, the items in question did not meet the statutory standard for exemption.

FINDING

Taxpayer's protest is denied.

II. Sales/Use Tax-Statute of Limitations

DISCUSSION

With respect to several invoices for products used at one facility, Taxpayer protested that the assessment was untimely. Taxpayer has provided sufficient information to conclude that the assessment was made outside the statutory period provided by Ind. Code § 6-8.1-5-2.

FINDING

Taxpayer's protest is sustained.

III. Tax Administration-Penalty

Taxpayer also protests the imposition of the penalty for negligence for the years in question. Penalty waiver is permitted if the taxpayer shows that the failure to pay the full amount of the tax was due to reasonable cause and not due to willful neglect. IC 6-8.1-10-2.1. The Indiana Administrative Code further provides:

(b) "Negligence" on behalf of a taxpayer is defined as the failure to use such reasonable care, caution, or diligence as would be expected of an ordinary reasonable taxpayer. Negligence would result from a taxpayer's carelessness, thoughtlessness, disregard or inattention to duties placed upon the taxpayer by the Indiana Code or department regulations. Ignorance of the listed tax laws, rules and/or regulations is treated as negligence. Further, failure to read and follow instructions provided by the department is treated as negligence. Negligence shall be determined on a case by case basis according to the facts and circumstances of each taxpayer.

(c) The department shall waive the negligence penalty imposed under IC 6-8.1-10-1 if the taxpayer affirmatively establishes that the failure to file a return, pay the full amount of tax due, timely remit tax held in trust, or pay a deficiency was due to reasonable cause and not due to negligence. In order to establish reasonable cause, the taxpayer must demonstrate that it exercised ordinary business care and prudence in carrying out or failing to carry out a duty giving

rise to the penalty imposed under this section. Factors which may be considered in determining reasonable cause include, but are not limited to:

- (1) the nature of the tax involved;
- (2) judicial precedents set by Indiana courts;
- (3) judicial precedents established in jurisdictions outside Indiana;
- (4) published department instructions, information bulletins, letters of findings, rulings, letters of advice, etc.;
- (5) previous audits or letters of findings concerning the issue and taxpayer involved in the penalty assessment.

Reasonable cause is a fact sensitive question and thus will be dealt with according to the particular facts and circumstances of each case.

45 IAC 15-11-2.

With respect to the penalty, Taxpayer has presented a case that it acted with reasonable care expected of taxpayers generally, and thus the penalty should be waived.

FINDING

Taxpayer's protest is sustained.

JR/JM/MR 051703